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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,023	11/30/2001	R. Sam Niedbala	030793-034000	6134
22204	7590	05/28/2008	EXAMINER	
NIXON PEABODY, LLP			ALEXANDER, LYLE	
401 9TH STREET, NW				
SUITE 900			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20004-2128			1797	
			MAIL DATE	DELIVERY MODE
			05/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/997,023	NIEDBALA ET AL.	
	Examiner	Art Unit	
	Lyle A. Alexander	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 February 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4,6,7,9,12-23,25,46-52 and 73-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-2, 4, 6, 7, 9, 12-23, 25, 46-52 and 73-77 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2,4,6-7,9,12-23,25,46-52,73-76 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shah.

See the appropriate paragraph of the 10/2/07 Office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shah.

See the appropriate paragraph of the 10/2/07 Office action.

Response to Arguments

Applicant's arguments filed 2/20/08 have been fully considered but they are not persuasive.

Applicant states Shah fails to teach "an expandable collector member ...second collection size." The Office does not agree. Shaw clearly teaches these limitations in figures 1-4 that illustrate the absorbent sponge(56) having a first size(52) that is smaller than a second size after contact with the sample. The Office maintains Shah has been properly read on the instant claims.

Applicants traverse the 35 USC 103 rejections over Shah on the grounds the Office has failed to show sufficient motivation. Applicants state the logic used by the

Office, *In re Boesch* optimization of a result effective variable, is not relevant instant facts. The Office does not agree and maintains “Simple substitution of one known element for another to obtain predictable results” is within the skill of the art. The Office has viewed the choice of a perforated disk as a result effective variable that has the well known and predictable results discussed in the 10/2/07 Office action as being desirable to minimize weight and manufacturing costs.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797